

Date: March 11, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: February 12, 2008**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: March 6, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

Sunshine Ordinance Task Force



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
DRAFT MINUTES
Tuesday, February 12, 2008
4:00 p.m., City Hall, Room 406**

Committee Members: Sue Cauthen, Chair; Kristin Chu, Nicholas Goldman

Call to Order: 4:00 p.m.

Roll Call: **Present:** Cauthen, Chu (left 6:55 p.m.), Goldman

Agenda Changes: None

Deputy City Attorney: Rosa M. Sanchez

Clerk: Chris Rustom

1. Approval of minutes of December 11, 2007.

Speakers: None

Motion approving minutes of December 11, 2007. (Goldman / Chu)

Ayes: Cauthen, Chu, Goldman

2. 08001 Determination of jurisdiction of complaint filed by Kimo Crossman against the District Attorney's Office for alleged failure to provide the calendar of District Attorney Kamala Harris in electronic format and without charging a fee.

Speakers: Kimo Crossman, complainant, said he requested Ms. Harris' calendar to be scanned in pdf and emailed to him but the DA's Office made a print-out and wanted to charge him \$0.10 per page. The DA, he said, thinks the Sunshine Ordinance applies to them in general but Section 67.24 (d) does not exclude the department. Dan Boreen said the DA's Office is subject to open access and transparency in the absence of a specific exception. Stephen Worsley said \$0.10 is a small amount compared to the time spent in going to the office, tagging the documents for print and collecting and paying for it on another trip. Transparency in the modern day means it should be available on the Internet .

Santip Patel of the DA's Office said his department accepted limited jurisdiction pursuant to *Revero v Superior Court* which was an Appellant Court case. His office, he said, also reserves the right to object to jurisdiction at any point if it exceeds the holding of *Revero vs Superior Court*.

In rebuttal, Mr. Crossman said he would like to see the DA's arguments in writing.

Chair Cauthen asked Mr. Patel to provide the committee with a copy of Revero v Superior Court case and have it included in the Task Force packet. Member Chu also requested an opinion from the DCA Ernie Llorente.

Public comment: Dan Boreen said the Sunshine Ordinance makes it very clear that attorneys are not supposed to act on behalf of a department in order to support withholding a public document.

Motion to find jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

3. 08003 Determination of jurisdiction of complaints filed by Christian Holmer against the Mayor's Office for alleged failure to provide records in response to Immediate Disclosure Requests for press releases the Mayor issued the previous day.

Speakers: None.

Motion recommending jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen asked the clerk to notify the Mayor's Office that not appearing before the committee was in violation of the Ordinance and that she expected them to be present at the Task Force meeting.

Note: Mr Holmer arrived after the jurisdiction motion was made and voted on. He was told jurisdiction was found and to appear before the Task Force on February 26, 2008.

4. 08004 Determination of jurisdiction of complaint filed by Kimo Crossman against the
08005 City Attorney's Office for alleged failure to provide communications between the
08007 City Attorney and District Attorney on Sunshine matters, detailed billing records for this advice, and calendars of city attorneys who provided advice.

Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide communications between the City Attorney and Harrison Sheppard on Sunshine matters, detailed billing records, and calendars of city attorneys who interacted with Mr. Sheppard..

Determination of jurisdiction of complaint filed by Kimo Crossman against City Attorney's Office for alleged failure to provide communications between the City Attorney and the Clerk of the Board of Supervisors on Sunshine matters, detailed billing records for this advice, and calendars of city attorneys who provided advice.

Chair Cauthen noted that files 08004, 08005, 08006, and 08007 were identical with the exception of 08006 which has an extra request. She suggested combining 08004, 08005 and 08007, but wanted to hear from Mr. Crossman and the other committee members before proceeding.

Kimo Crossman, the complainant, said he did not object to combining complaints #07004, #07005 and #07007. He said the CAO has not responded to any of his requests and would like the department to state why his requests could not be acted on within the permitted periods. He said the department was prioritizing his requests but was not told how they were being prioritized. Mr. Crossman also said the committee agenda was missing sections of the Ordinance the department had violated.

Member Goldman suggested combining 08004, 08005 and 08007. Member Chu agreed.

Motion finding jurisdiction on 08004, 08005 and 08007. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

5. 08006 Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide all materials related to the Buck Delventhal meeting of October 9, 2007, regarding Sunshine Task Force hearings against Supervisors Peskin and Maxwell, and failure to provide any materials or communications before or after the meeting relating to the matters discussed.

Kimo Crossman, complainant, said he wants to know what was discussed during an apparent meeting between DCA Buck Delventhal and representatives of Supervisors Aaron Peskin and Sophie Maxwell as suggested in a document made available in a different Sunshine document request. The supervisors, he said, had pending Sunshine complaints at the time the meeting occurred. His request also included a 15-minute phone conversation with Mr. Delventhal.

Public comment: none

Motion accepting jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

6. 08008 Determination of jurisdiction of complaint filed by Stephen Worsley against the Recreation and Park Department for alleged failure to provide requested records, namely: Procedures used to select COIT Partner and areas of background investigation, findings on the partners, and complete review and acceptance signatures.

Chair Cauthen announced that she has had previous contact with the complainant, but would not recuse herself because she believed she could be impartial.

Mr. Worsley, the complainant, said Coit Tower was about to be privatized and the contract going to a businessman who runs the Santa Monica Boardwalk. He said he was seeking various documents from Margo Staub, the department's property management division manager, to see what Rec & Park knows about the businessman. He also said the 75-year-old Depression Era heritage site is going to be turned into a carnival where beer and wine are going to be sold all day long, and tourist bric-a-brac sold in the rotunda.

Rose Dennis, representing Park & Rec, said the department has provided Mr. Worsley with numerous documents many times and is still trying to accommodate his requests. In fact at Mr. Worsley's request she had brought him a copy of a document he requested. Ms. Dennis said if jurisdiction was found, the department has documentation that shows their efforts.

In rebuttal, Mr Worsley said he feels that there is a secret hope among Rec & Park officials that they will be able to close the deal without public scrutiny.

Public comment: Kimo Crossman, commented on Ms Dennis' use of "inordinate amount of time" spent on assisting Mr. Worsley. He said the Ordinance says information requests must be considered as part of a city employee's daily workload. Dan Boreen said the committee should automatically find official misconduct if the department produces the document at the hearing.

Member Chu and Chair Cauthen reminded Mr Worsley to provide the Task Force with detailed information to help them decide his case.

Motion finding jurisdiction (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

7. Discussion regarding the direction of the Complaint Committee and Task Force efficiency.

The committee went through the Dec11, 2007 meeting minutes and discussed issues related to the topic: The topics include Member Chu's suggestion that the Complaint Committee be disbanded and the Task Force hold two meetings a month, Mr Grossman's statement that if it would make things easier if departments were forced to abide by the deadlines; and Mr. Crossman's support for disbanding the committee.

The committee also took into consideration Administrator Frank Darby and DCA Ernie Llorente's position that said it would become more complicated if certain work was not done in committee. They also revisited the committee's Mission Statement and went over the Complaint Procedures.

They decided to recommend to the task force that the committee be discouraged from spending excessive time debating jurisdiction when both the City Attorney and the department have no objection to it. It would also apply when the complainant and respondent have not objected to jurisdiction and there is a request to exercise Rule 4 of the Mission and Work Plan.

Public Comment: Kimo Crossman said people don't know the process. They automatically want to argue their case even though the issue is just jurisdiction. If jurisdiction is not disputed the complaint should go automatically go to the Task Force. Hold two task force meetings a month for a few months and assess the situation, he suggested. He said he has to take off from work to attend the hearings. Dan Boreen said the Task Force has in the past allowed a jurisdictional and hearing on the merits at the same time. He said the only objection to jurisdiction would be from the department or an individual. If that happens, the burden should shift to the person or department and ask for the

reason in writing, send it to the Task Force and limit presentation time.

Chair Cauthen suggested helping complainants understand the process and helping them collect evidence should also be part of the committee's role. It was agreed that Chair Cauthen would ask the Task Force chair to have the committee agendaed at its next meeting so that she would tell members that the committee would only discuss contested jurisdictions. She also wanted to further hear from Administrator Frank Darby and DCA Llorente and requested their presence at the next Task Force meeting.

8. Administrator's Report

The Administrator submitted his report.

Speakers: Kimo Crossman complained that he was not provided with a copy of the City Attorney's response to two of his files on two different two occasions. Chair Cauthen asked the clerk to make sure documents are provided to both parties.

9. Public Comment

Speakers: Dan Boreen said if the Task Force is to meet twice a month, it is because of a department's failure to comply. He said he filed four complaints in November 2007. Jurisdiction was found and Orders of Determination issued and yet it has turned out to be a long protracted process. As discussed earlier in the evening, he said, other Sunshine committees also have to tighten the process. Giving departments ample time and opportunity and using all of the city's resources including the city attorneys to look for an excuse not to comply is wrong, he said.

Adjournment

The meeting adjourned at 7:00 p.m.

This meeting has been audio recorded and is on file in the office of the Sunshine Ordinance Task Force

